

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

FILED

JAN 02 2019

Clerk, U.S. District Court
District of Montana
Missoula

DAVID STEVEN BRAUN,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendants.

CV 18-70-BU-BMM-JCL

ORDER

Plaintiff David Braun commenced this action with his complaint filed on November 7, 2018. On December 3, 2018, Defendant Bank of America, N.A. filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss the complaint.

In response, on December 23, 2018, Braun filed an amended complaint purportedly advancing new claims in addition to the same claims presented in his original complaint. Braun also filed a brief in response to the motion to dismiss.

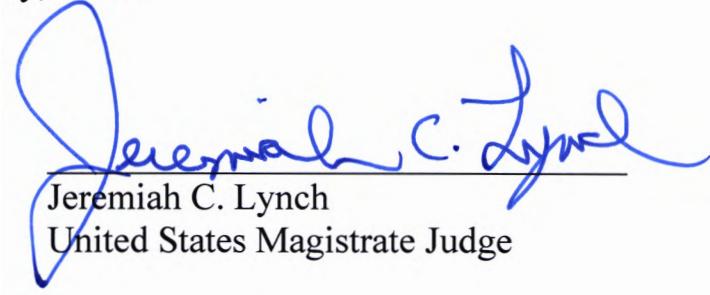
As authority for his amended complaint Braun cites to Fed. R. Civ. P. 15(a)(1)(B) which allows a plaintiff to amend his complaint once as a matter of course within “21 days after service of a motion under Rule 12(b)[.]” Braun’s amended pleading filed on December 23, 2018, was within 21 days after Bank of America’s Rule 12 motion as permitted under Rule 15.

An amended complaint “supersedes the original [complaint], the latter being

treated thereafter as non-existent." *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). And the amended complaint renders moot a pending Rule 12(b)(6) motion to dismiss that was targeted at the original complaint. *Id.*

Therefore, IT IS HEREBY ORDERED Bank of America' motion to dismiss (doc. 8) is deemed moot by Braun's amended complaint, subject to renewal at Bank of America's election. The renewed motion, if filed, would allow proper briefing directed at all of Braun's claims.

DATED this 2nd day of January, 2019.



Jeremiah C. Lynch
United States Magistrate Judge